United Nations A/HRC/RES/36/5

General Assembly

Distr.: General
4 October 2017

Original: English

Human Rights Council
Thirty-sixth session
11–29 September 2017
Agenda item 3

Resolution adopted by the Human Rights Council on 28 September 2017

36/5. Unaccompanied migrant children and adolescents and human rights

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations,

Reaffirming the Universal Declaration of Human Rights, which proclaims that all human beings are born free and equal in dignity and rights, and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the Optional Protocol thereto on the sale of children, child prostitution and child pornography, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of Persons with Disabilities, the Vienna Convention on Consular Relations, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention against Discrimination in Education, the Convention relating to the Status of Refugees and the Protocol thereto, and the Worst Forms of Child Labour Convention, 1999 (No. 182) of the International Labour Organization,

Recalling also all previous resolutions of the General Assembly on the protection of the human rights of migrants, in particular those relating to the situation of unaccompanied migrant children and adolescents, such as resolutions 69/187 of 18 December 2014 and 71/177 of 19 December 2016, the Human Rights Council resolutions on the protection of the human rights of migrants, in particular resolutions 9/5 of 16 September 2008, 12/6 of 12

GE.17-17406(E)
1717406

Please recycle

October 2009, 29/12 of 2 July 2015, 33/7 of 29 September 2016 and 35/17 of 22 June 2017, Commission on Population and Development resolution 2013/1 of 26 April 2013, entitled "New trends in migrations: demographic aspects", and the Declaration of the High-level Dialogue on International Migration and Development, adopted on 3 October 2013,

Reaffirming the New York Declaration for Refugees and Migrants and the annexes thereto, adopted by the General Assembly in its resolution 71/1 of 19 September 2016,

Reaffirming also the commitments expressed in the New York Declaration, in which Member States recognized — and expressed their willingness to address, in accordance with their obligations under international law — the special needs of all people in vulnerable situations who are travelling within large movements of refugees and migrants, including children, especially those who are unaccompanied or separated from their families, and affirming that children should not be criminalized or subject to punitive measures because of their migration status or that of their parents,

Taking note of the reports submitted by the United Nations High Commissioner for Human Rights on the panel discussion on unaccompanied migrant children and adolescents and human rights held at the thirty-fifth session of the Human Rights Council[1] and on the promotion and protection of the human rights of migrants in the context of large movements, submitted to the Council at its thirty-third session,[2]

Taking note with appreciation of the work of the Special Rapporteur on the human rights of migrants, especially the reports in which the mandate holder addressed the human rights of unaccompanied migrant children and adolescents, in particular his report on the human rights of migrants on a 2035 agenda for facilitating human mobility, presented to the Human Rights Council at its thirty-fifth session,[3]

Noting the work of the Committee on the Rights of the Child related to unaccompanied and separated children, including its general comment No. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin, and to the outcome of the 2012 day of general discussion on the rights of all children in the context of international migration,

Acknowledging the important contribution made by migrants and migration to development in countries of origin, transit and destination, and the complex interrelationship between migration and development,

Looking forward to the outcome of the ongoing combined work of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Committee on the Rights of the Child to develop a joint general comment on the human rights of children in the context of international migration,

Taking note with appreciation of the report submitted by the Human Rights Council Advisory Committee at the present session on the study on the global issue of unaccompanied migrant children and adolescents and human rights,[4] in which the Committee defines the areas, reasons and cases in which this issue arises in the world, and the way in which human rights are threatened and violated, and makes recommendations for the consideration of States on how to protect the human rights of unaccompanied migrant children and adolescents,

---

[1] A/HRC/36/21.
[2] A/HRC/33/67.
[3] A/HRC/35/25.
[4] A/HRC/36/51.

Concerned by the large and growing number of migrants, in particular unaccompanied migrant children or those separated from their parents, who find themselves in vulnerable situations when attempting to cross international borders on dangerous migratory routes, and recognizing the obligation of States to respect the human rights of those migrants regardless of their migratory status, in accordance with their obligations under international law,

Expressing serious concern about the vulnerability of and risks faced by migrants in countries of transit and destination, in particular children, including adolescents, who are unaccompanied or separated from their families, who are forced to flee or decide to leave their homelands owing to multiple causes and who travel alone migratory routes, regardless of their migratory status, since they may be exposed to serious human rights violations and abuses that can threaten their physical, emotional and psychological well-being, and may also be exposed to crimes and human rights abuses committed by transnational criminal organizations or gangs, including crimes such as theft, kidnapping, extortion, physical abuse, the sale of and trafficking in persons, forced labour, and sexual abuse and exploitation,

Reaffirming that the general principles of the Convention on the Rights of the Child, including the best interests of the child, non-discrimination, participation, survival and development, provide the framework for all actions concerning children and should guide legislation, policies and practices relating to children, regardless of their status, including in the context of migration,

Recalling the New York Declaration for Refugees and Migrants, in which the General Assembly recognized the importance of cooperation among countries of origin, transit and destination in ensuring that any type of return, whether voluntary or otherwise, must be consistent with States' obligations under international human rights law and in compliance with the principle of non-refoulement and should respect the rules of international law, and must in addition be conducted in keeping with the best interests of children and with due process, while special attention should be paid to the needs of migrants in vulnerable situations who return, such as unaccompanied or separated children,

Recognizing that, for the full and harmonious development of a child's personality, he or she should grow up in a family environment and in an atmosphere of happiness, love and understanding, and, therefore, that States of origin, destination and, where appropriate, transit should, as applicable under national law, facilitate family reunification as an important objective in order to promote the welfare and the best interests of migrant children, including adolescents,

Welcoming immigration programmes, adopted by some countries, that allow migrants to integrate fully into their host countries, facilitate family reunification and promote a harmonious, tolerant and respectful environment, while encouraging States to consider the possibility of adopting such programmes,

Recognizing that discussions on the global compact for safe, orderly and regular migration are an important opportunity to address the issue of unaccompanied migrant children and adolescents,

1. *Reaffirms* that States, in accordance with their obligations under international law, are responsible for promoting and protecting the human rights and fundamental freedoms of all migrants, regardless of their migration status, and that all migrant children, within their territory and subject to their jurisdiction, are entitled to equal protection under the law, and calls upon States to fully respect their rights, without discrimination of any kind, taking into consideration that they are children first and foremost;

2. *Urges* States to give primary consideration at all times to the best interests of the child, particularly with regard to children in transit or crossing borders, and when formulating policies on integration, return or family reunification, to carry out individualized, comprehensive best-interest assessments to identify the protection needs of migrant children and adolescents, particularly unaccompanied and separated children, and to carry out early and prompt assessments of victims of violence, exploitation and abuse who may qualify for refugee status or other forms of protection;

3. *Calls upon* States to ensure appropriate, integrated and gender-sensitive child protection care and services for all unaccompanied and separated migrant children and adolescents starting from the time of their arrival, in accordance with relevant international legal frameworks, taking into account the principle of the best interests of the child and the special needs of unaccompanied migrant children and those separated from their families, to protect them against all forms of abuse, neglect, exploitation and violence and to work to provide for their health, education and psychosocial development in a manner that is age- and gender-sensitive and that ensures a continuum of protection throughout the migration cycle and across transnational borders;

4. *Also calls upon* States to promote and protect effectively the human rights and fundamental freedoms of all migrants, especially unaccompanied migrant children and adolescents, regardless of their migration status, and to address international migration through international, regional or bilateral cooperation and dialogue and a comprehensive and balanced approach, recognizing the roles and responsibilities of countries of origin, transit and destination in promoting and protecting the human rights of all migrants and avoiding approaches that might aggravate their vulnerability;

5. *Encourages* States to prevent the separation of migrant children and adolescents from their families, to establish effective systems in conformity with their international obligations and commitments, and to prioritize family reunification for unaccompanied or separated children with their parents, except when further separation is necessary in the best interests of the child, taking full account of the right of the child to express his or her views freely in matters that affect them and ensuring that applications by the child, or his or her parents, to enter or leave a country for the purpose of family reunification are dealt with in a positive, humane and expeditious manner and entail no adverse consequences for the applicants or family members;

6. *Reminds* States that the detention of a migrant child or adolescent on the basis of their migration status or that of their parents is seldom, if ever, in the best interests of the child, and also reminds them of their commitment to work towards ending this practice, and calls upon States to consider reviewing policies that criminalize cross-border movements and to adopt alternatives to detention for children that take into account the best interests of the child, as a primary consideration, and respect the human rights of migrant children and adolescents, including the right to preserve their identities and family relations and not to be subjected to arbitrary or unlawful interference with their families;

7. *Calls upon* States of origin, transit and destination to find effective and timely responses to the needs of unaccompanied or separated children as soon as they are identified as such, including, where appropriate and feasible, their integration, voluntary and safe repatriation or resettlement, in keeping with the principles of due process, the best interests of the child and non-refoulement, and urges States to develop bilateral or multilateral agreements that standardize approaches for identifying and implementing sustainable solutions for unaccompanied or separated children, including a procedure for monitoring their return;

8. *Encourages* all States to prevent and eliminate discriminatory policies and legislation at all levels of government, including those that deny migrant children access to

education and health care and other social services while taking into account the best interests of the child as a primary consideration in fostering the successful integration of migrant children into education and health-care systems and other social services and the removal of barriers to their education and health in host countries and countries of origin;

9. *Calls upon* all States to ensure that their immigration policies are consistent with their obligations under international law, including, as applicable, human rights and humanitarian law, and to promote the enjoyment of human rights by all migrants without discrimination, including by taking steps to increase cooperation and coordination at all levels to detect and to end serious human rights violations and abuses, in particular trafficking and smuggling of migrant children and other forms of abuse and exploitation;

10. *Encourages* States to take into consideration the present resolution in the development of the global compact for safe, orderly and regular migration, and to consider specific measures to strengthen the rights of migrant children and adolescents, paying particular attention to the specific needs of unaccompanied and separated migrant children;

11. *Requests* the United Nations High Commissioner for Human Rights, within the framework of the preparations for the global compact for safe, orderly and regular migration and in accordance with General Assembly resolutions 71/1 and 71/280 of 6 April 2017, to provide inputs submitted to the Human Rights Council by the Office of the High Commissioner for the forthcoming stocktaking meeting and to engage with Members States and the Special Representative of the Secretary-General for International Migration to help to identify, through a human rights-based approach, concrete measures and best practices to improve the human rights situation of unaccompanied migrant children and adolescents;

12. *Invites* the special procedures of the Human Rights Council, in accordance with their mandates, to continue to give due consideration to the situation of unaccompanied migrant children and adolescents and the impact of this issue on the full enjoyment of their human rights, and to continue to report thereon;

13. *Decides* to remain seized of the matter.

39th meeting
28 September 2017

[Adopted without a vote.]